

VIRGINIA DEPARTMENT OF EDUCATION  
Division of Special Education and Student Services  
Office of Dispute Resolution & Administrative Services

**ANNUAL REPORT  
OF THE  
DISPUTE RESOLUTION SYSTEMS  
AND  
ADMINISTRATIVE SERVICES**

- Due Process Hearing System
- Mediation Services
- Complaints Resolution System
- Administrative Services

Reporting Period: July 1, 2003 – June 30, 2004

This review serves to assist the Virginia Department of Education (VDOE) in:

- ensuring compliance with the federal and state mandates governing the dispute resolution systems;
- identifying future training activities, particularly for hearing officers and mediators;
- identifying and addressing systemic issues impacting local school divisions; and,
- assessing the strengths and challenges of each system.

This analysis serves as a reporting mechanism to VDOE's management team responsible for the development of VDOE's Annual Performance Report to the U.S. Department of Education's Office of Special Education Programs, for other data collection reports, as well as provides information on this office's systems to VDOE staff and consumer groups listed at the end of this report.

Questions regarding the contents of this report may be directed to the Office of Dispute Resolution and Administrative Services at (804) 225-2013. Information regarding the office's services is available on the web at:

<http://www.pen.k12.va.us/VDOE/dueproc/>

August 2004

## PART I DUE PROCESS HEARING SYSTEM

- Baseline Data
- Hearing Officer Performance
  - ✓ Management of Hearings
  - ✓ Decisions
  - ✓ Managing the 45-Day Timeline
- Recertification of Hearing Officers
- Training of Hearing Officers
- Implementation Plans
- Follow-up System for Implementation Plans
- ODR/AS Initiatives

### A. BASELINE DATA

#### ☐ Number of Hearing Requests

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
Number of requests	127	100
Number dismissed/withdrawn <sup>1</sup>	81	62
Number of decisions rendered after full hearing <sup>2</sup>	34	18
Number pending as of 6-30-04	12	20

#### ☐ Number of Hearing Requests – 5-Year Period

Year	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
Total Requests	113	130	120	100	127

<sup>1</sup> Case closed without a hearing due to a mediation, settlement agreement, or withdrawal.

<sup>2</sup> Redacted decisions are posted on the web: <http://www.pen.k12.va.us/VDOE/dueproc/>

☐ **Number of Decisions**

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
Number Decisions	<b>34</b>	<b>18</b>
Initiating Party:		
Parent	29	17
LEA	5	1
Prevailing Party:		
Parent	6	1
LEA	25	14
Split	3	3

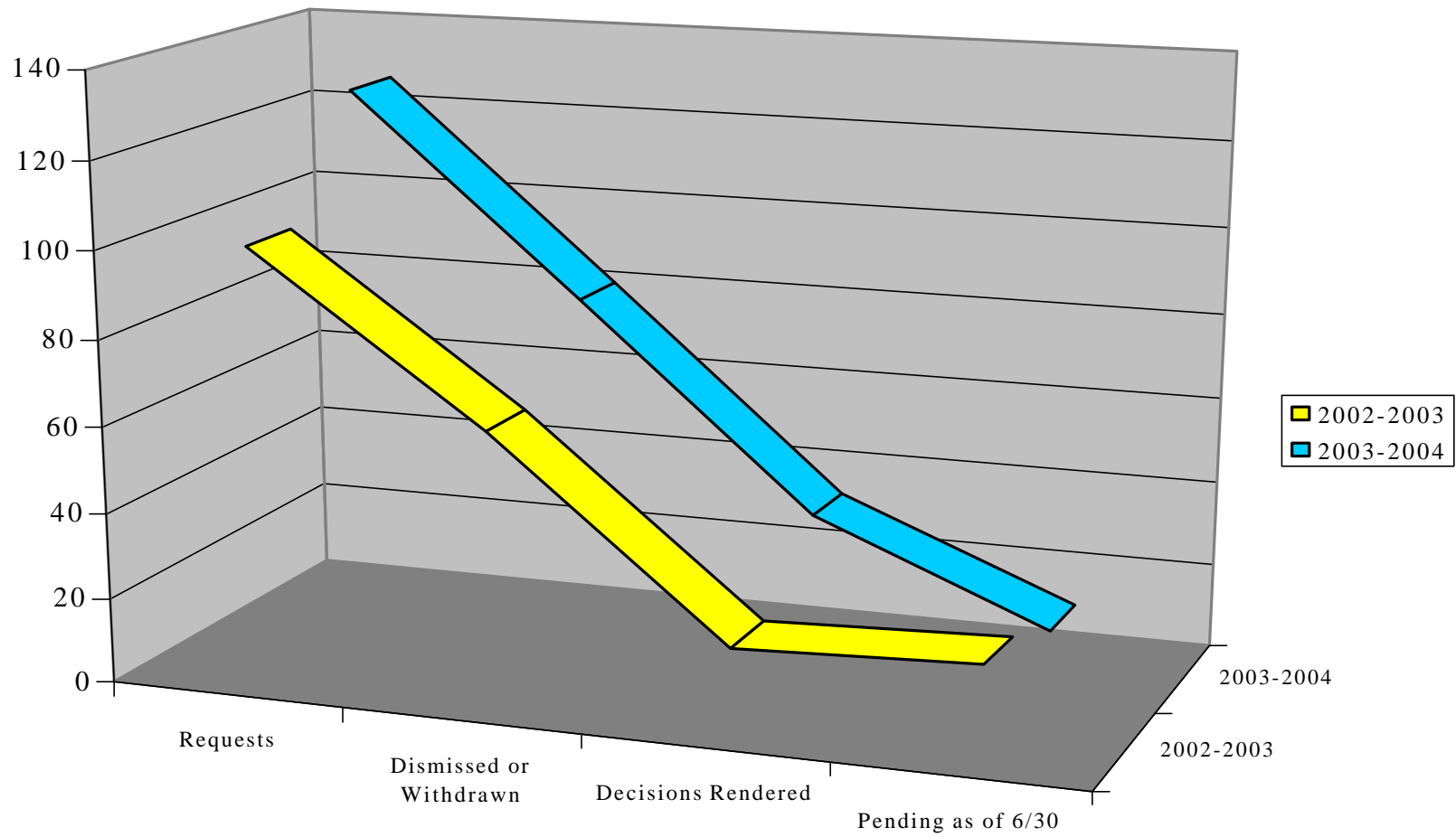
☐ **Additional Case Information**

During this reporting period, 6 cases, initiated in 2002-03, were closed. One case initiated in 2000-01 was closed during this reporting period (the Fourth Circuit remanded the 2000-01 case to the hearing officer for re-review and disposition.).

Disposition of these 7 cases

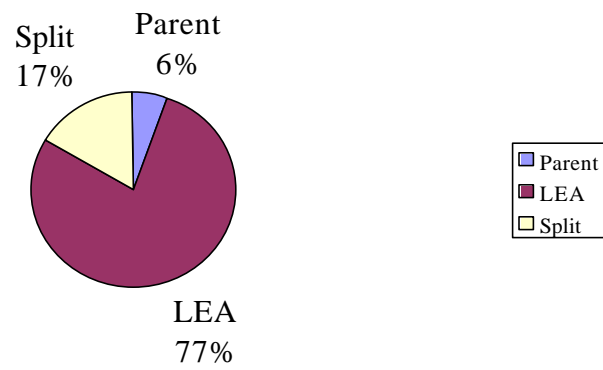
Issues	Prevailing Party	
	LEA	Parent
<b>IEP: 7</b>		
✓ placement (5)	4	1
✓ services (2)	1	1
<b>Eligibility: 1</b>		
✓ procedures	1	0
<b>Others: 4</b>		
✓ ESY (3)	1	2
✓ Violation of 504 (1)	0	1

### Due Process Base Line Data

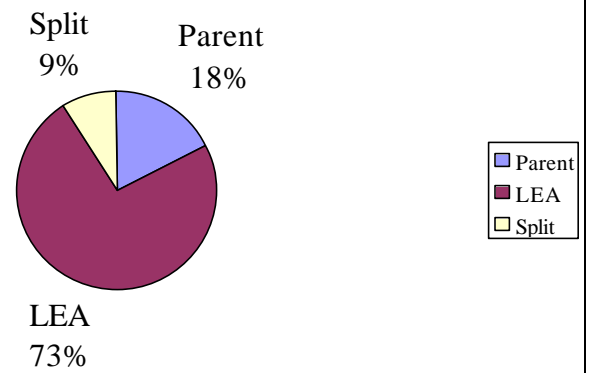


	Requests	Dismissed or Withdrawn	Decisions Rendered	Pending as of 6/30
2002-2003	100	62	18	20
2003-2004	127	81	34	12

**Prevailing Parties 2002-2003**



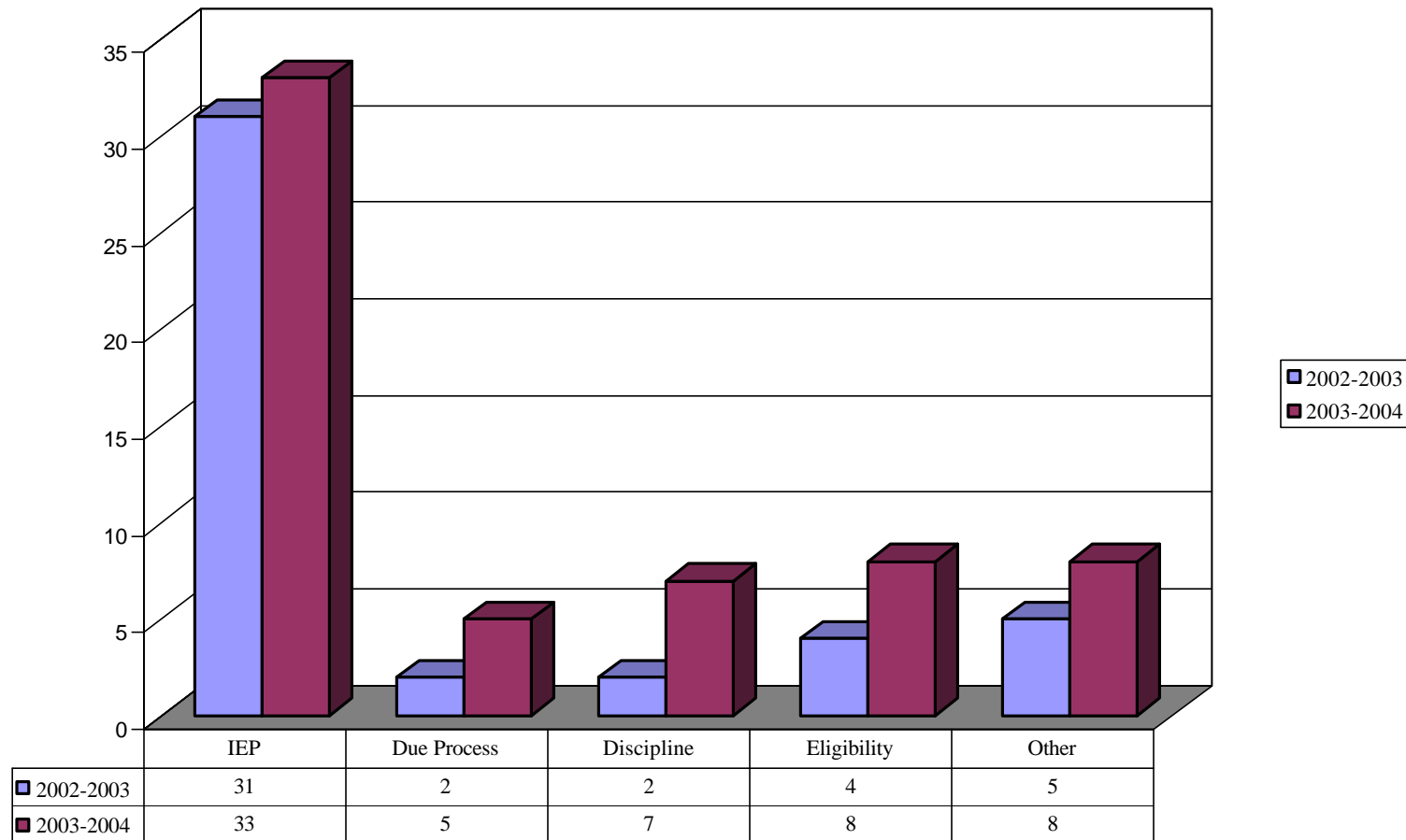
**Prevailing Parties 2003-3004**



☐ **Issues and Disposition**

	Reporting Periods						
	July 1, 2003 – June 30, 2004			July 1, 2002 – June 30, 2003			
		Prevailing Party			Prevailing Party		
Issues / Sub-issues	# Issues	LEA	Parent	# Issues	LEA	Parent	Split
<b>Total case issues</b>	<b>61</b>			<b>44</b>			
<b>IEP</b>	<b>33</b>			<b>31</b>			
Placement	12	12	0	8	7	1	0
Services	10	8	2	13	9	3	1
Development	3	3	0	1	1	0	0
Compensatory services	5	5	0	8	6	2	0
Notice	3	3	0	1	1	0	0
<b>Due Process</b>	<b>9</b>			<b>2</b>			
Procedural violations	3	2	1	2	2	0	0
Settlement agreement	2	0	2	0	0	0	0
Appropriate stay put	2	2	0	0	0	0	0
Burden of proof	1	0	1	0	0	0	0
Statute of limitation	1	1	0	0	0	0	0
<b>Discipline</b>	<b>7</b>	<b>7</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>Eligibility</b>	<b>8</b>			<b>4</b>			
Classification	4	3	1	4	3	1	0
Evaluations	4	3	1	0	0	0	0
<b>Other</b>	<b>4</b>			<b>5</b>			
Child Find	0	0	0	2	2	0	0
ESY	3	2	1	2	1	1	0
Emotional distress	1	1	0	0	0	0	0
Violation of 504	0	0	0	1	1	0	0

## Due Process Issues



- ☐ **Number of Hearing Officers**
- ☐ **Number of School Divisions with hearing requests**

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
Number of Hearing Officers	41	46
✓ assigned to hearings <sup>3</sup>	40	31
✓ assigned more than once	36	11
Number of school divisions involved in hearing requests	37 <sup>4</sup>	28

☐ **Trends**

- Requests for due process hearings rose by 27 requests over last year's reporting period. The requests represent 10 more cases above the 5-year average. No factor(s) can be identified as contributing to this increased number of requests.
- Eleven (11) additional school divisions were involved with hearing requests during this reporting period. No particular school division or region experienced an influx of cases. As expected, the metropolitan school divisions continue to carry the higher number of due process hearing requests.
- The data from this current reporting period is consistent with the total year data for 2002-03, in identifying three repetitive themes:<sup>5</sup>
  - ✓ Parents are the most frequent initiating party.
  - ✓ LEAs are more often the prevailing party.
  - ✓ Issues focus primarily on: IEP placement; IEP services; discipline; and eligibility.
- The number of hearing officers decreased by 5 persons this reporting period. This number represents a reduction of 89 hearing officers since the 2001-02 school year. The reduction in the number of hearing officers and their increased experience at the pre-hearing level are positive outcomes of the increased training requirements. For the first time since the inception of the hearing officer system, hearing officers are receiving more

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<sup>3</sup> Two of the hearing officers serve as Complaint Appeal Reviewers for the Complaint Appeal System. They are required to complete the same training requirements as the other hearing officers; however, while serving as a complaint appeal reviewer, they are not appointed to due process hearing cases.

<sup>4</sup> One case involved VDOE as a co-party.

<sup>5</sup> 2002-2003 Annual Report for Special Education, Office of Due Process and Complaints.



assignments. This enables hearing officers to hear matters more frequently, even if only at the pre-hearing level, sharpen their skills and utilize their training more frequently.

## **B. HEARING OFFICER PERFORMANCE – MANAGEMENT OF THE HEARING**

Evaluations are sent to both parties following the issuance of each decision, whether or not the case went to full hearing or was dismissed because of mediation, settlement agreement or withdrawal of request.

The director of the Office of Dispute Resolution and Administrative Services (ODR/AS) reviews each evaluation response. The coordinator of due process services checks any concerns against the case record and may call the party(ies) for clarification. The director or coordinator contacts the hearing officer to review issues of concern and as necessary, issues a written cautionary notice to the hearing officer regarding any identified concerns. Additionally, as necessary, the director or coordinator may meet with the hearing officer to review the application of the regulations.

	Reporting Periods	
	July 1, 2003 – June 30, 2004 <sup>6</sup>	July 1, 2002 – June 30, 2003
Number of evaluations sent	389	92
Number of responses	112	46

### ☐ **Trends:**

- Over three times as many evaluations were sent during the current reporting period as compared with the 2002-03 reporting period.
- The responses indicated that the hearing officers remain strongly consistent in the areas of:
  - ✓ Scheduling agreeable dates, times, and locations;
  - ✓ Maintaining a fair and impartial atmosphere;
  - ✓ Being knowledgeable of the requirements of both federal and state laws and regulations; and

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<sup>6</sup> The reported numbers are not related to the number of hearing requests for the reporting period. Rather, they relate to the decisions received by ODR/AS for the reporting period, which includes those cases carried over from the previous reporting period.

- ✓ Making prompt contact with both the parent and the LEA.
- Areas showing significant improvement from the last reporting period are:
  - ✓ Informing the parties of the availability of mediation;
  - ✓ Issuing the decision in the required timelines; and
  - ✓ Helping ensure that witnesses needed for the hearing were present.
- Areas of concern are raised with the individual hearing officer and as necessary, notice is sent to the individual regarding any need for improvement. During this reporting period, ODR/AS staff met with 2 hearing officers to further review area(s) of concern and develop performance measures to assist the hearing officer in meeting VDOE's expectations.

#### Sample Comments

*Hearing officer was very eager to ensure that the date and place were convenient and workable for us.*

*The hearing officer treated us with the same respect as the attorney for the school division.*

*Hearing officer did an excellent job of keeping the parties focused while still being able to get out all of the issues.*

*The hearing officer conducted all matters fairly and promptly.*

*The hearing officer has a thorough understanding of IDEA principles and ran a very fair hearing.*

### **C. HEARING OFFICER PERFORMANCE - DECISION**

ODR/AS' director and coordinator of due process services review each hearing officer's decision.<sup>7</sup> Additionally, the coordinator reviews and monitors all pre-hearing reports, orders, and correspondences. Either the director or coordinator contacts the hearing officers if errors are identified relative to:

- apparent bias to either party
- correct use of citations
- readability

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<sup>7</sup> Redacted decisions are posted on the web: <http://www.pen.k12.va.us/VDOE/dueproc/>

- correct appeal information
- other errors, such as incorrect names or conflicting data

ODR/AS may not review the decision for errors of law which are reserved for appellate review. As necessary, the director or coordinator contacts the hearing officer with any concerns and, in certain instances, requires the hearing officer to issue an error correction or a statement of clarification. These procedures are consistent with VDOE's management responsibilities for the due process system. (8 VAC 20-80-76 Q.2)

☐ **Trends:**

- Decisions and pre-hearing reports continue to be consistent in:
  - ✓ writing in a manner both the LEA and parents can understand;
  - ✓ advising both parties of the option of mediation;
  - ✓ clearly identifying what was being ordered as a result of the decision; and,
  - ✓ including references to statutes or regulations that support the conclusions reached by the hearing officer.
- Fewer hearing officers erred this reporting period relative to:
  - ✓ advising the parties of their appeal rights; or
  - ✓ documenting that extensions of timelines were in the best interests of the child.

In those instances of error, ODR/AS staff reviewed the necessary requirements with the hearing officer. In the cases involving inaccurate identification of appeal rights, the ODR/AS staff required that the hearing officer reissue the decision.

#### **D. HEARING OFFICER – TRAINING**

In addition to the training requirements of the Virginia Supreme Court, the VDOE is responsible for training hearing officers on the legal aspects of special education (laws, regulations, and case law updates) and management of special education hearings. For the 2003-04 school year, hearing officers attended a two-day training event, April 2004, that focused on:

- ✓ special education law: IDEA Reauthorization and NCLB
- ✓ case law update
- ✓ establishing burden of proof in due process hearings

- ✓ writing sensible decisions
- ✓ understanding ADHD – testing/diagnostic assessment issues; implications for the classroom; medical/legal/educational/parental issues

Since 2001, the trainings have included aspects of specific disabilities. These one-day sessions have focused on: understanding testing and assessment as applied to children with disabilities; the application of evaluations to eligibility and IEP team decisions; assessments for related services; parental issues; and methodologies. To date, specific disability focus areas include: autism, learning disabilities, and for this year, ADHD/ADD.

During this reporting period, each hearing officer completed a self-assessment of skills to be a special education hearing officer, and developed a self-study program. The program requires a minimum of 30 points of training activities, identified by VDOE, and which are to be completed by June 30, 2005. Each hearing officer's program was reviewed and approved by ODR/AS' director and includes an evaluation component for each self-study activity.

VDOE established six competencies for special education hearing officers in 2001 relative to VDOE's increased training requirements.<sup>8</sup> The self-assessment and self-study components are part of Competency VI.

## **E. MANAGING THE 45-DAY MANDATED TIMELINE**

Hearing officers are mandated to issue their decisions within 45 calendar days after the local school division receives the request for the hearing. The hearing officer may grant an extension only when it serves the best interest of the child. (8 VAC 20-80 76.K of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*)

VDOE identified the 45-day timeline as one of its target areas in its Continuous Improvement Monitoring Process Reports to OSEP (2002 and 2003). VDOE developed and implemented a process that includes intensive monitoring and tracking of these timelines, training hearing officers on this subject, and issuance of notices to hearing officers who fail to document extensions. VDOE also assured Virginia's Code Commission that these efforts would address the concerns raised during the public hearings of the Administrative Law Advisory Committee. (VDOE Report to the Code Commission and ALAC, November 1, 2002) This is also a target area identified now in VDOE's 2004 Annual Performance Report to OSEP.

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<sup>8</sup>*Internal Operational Procedures for Implementing the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, Relative to the Due Process Hearing System*, March 2001.

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
Total number of due process requests	127	100
Number of cases exceeding the 45-day timeline	46	46

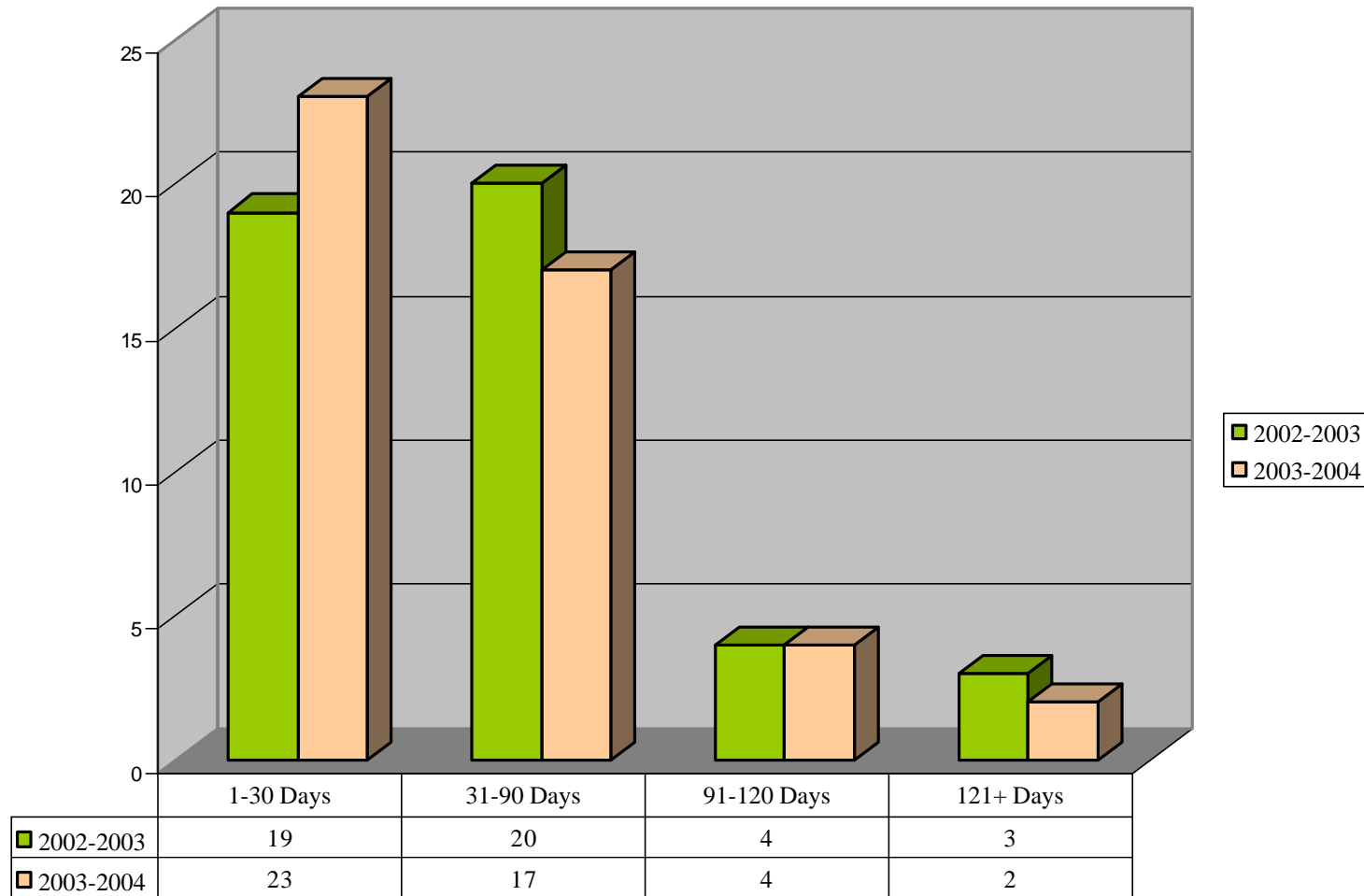
☐ **Trends:**

- This data is consistent with the data from two previous fiscal years:
  - ✓ 2001-02: 60 out of 120 hearing requests involved extensions.
  - ✓ 2002-03: 46 out of 100 hearings involved extensions.
- Number of days over the 45-day timeline

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
<b>Total Cases</b>	<b>46</b>	<b>46</b>
1 – 30 days	23	19
31 – 90 days	17	20
91 – 120 days	4	4
121 +	2	3

- The data indicates that:
  - ✓ one-half or approximately 50% of the cases involve extensions
  - ✓ the number of instances when extensions are granted is not decreasing
  - ✓ the majority of decisions are being rendered within the first extension period
- The hearing officers are doing significantly better in documenting extensions during this reporting period. The coordinator of due process services diligently employs an electronic tracking log to monitor all timelines and extensions to ensure that the extensions comport

with regulatory requirements. ODR/AS addresses with the individual hearing officer errors in meeting the regulatory requirements. As necessary, ODR/AS requires the hearing officer to reissue proper correspondence regarding extensions and may require the hearing officer to meet with ODR/AS staff to review the regulations and complete performance measures to ensure compliance with the requirements.

**Days Exceeding the 45 Day Timeline**

☐ Party requesting the extension:

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
Parent	15	13
LEA	3	1
Both	18	27
Hearing Officer	9	5
Child	1	0

This data is consistent with previous years, except there is an increased number this reporting period of hearing officers establishing extensions, although neither party requested it. Virginia's special education regulations require that only the parties may request an extension. ODR/AS learned during follow up with the hearing officers that 5 of the 9 cases involved the hearing officers miscalculating the trigger date. ODR/AS has since corrected this item with the hearing officers, both in the individual cases, and in general, through a pre-hearing/hearing checklist for them to use once assigned to a case.

☐ The reasons for the extension are consistent with previous years:

- ✓ accommodate availability of experts
- ✓ parents obtaining counsel
- ✓ scheduling conflicts<sup>9</sup>
- ✓ inclement weather [Hurricane Isabel: Fall 2003]

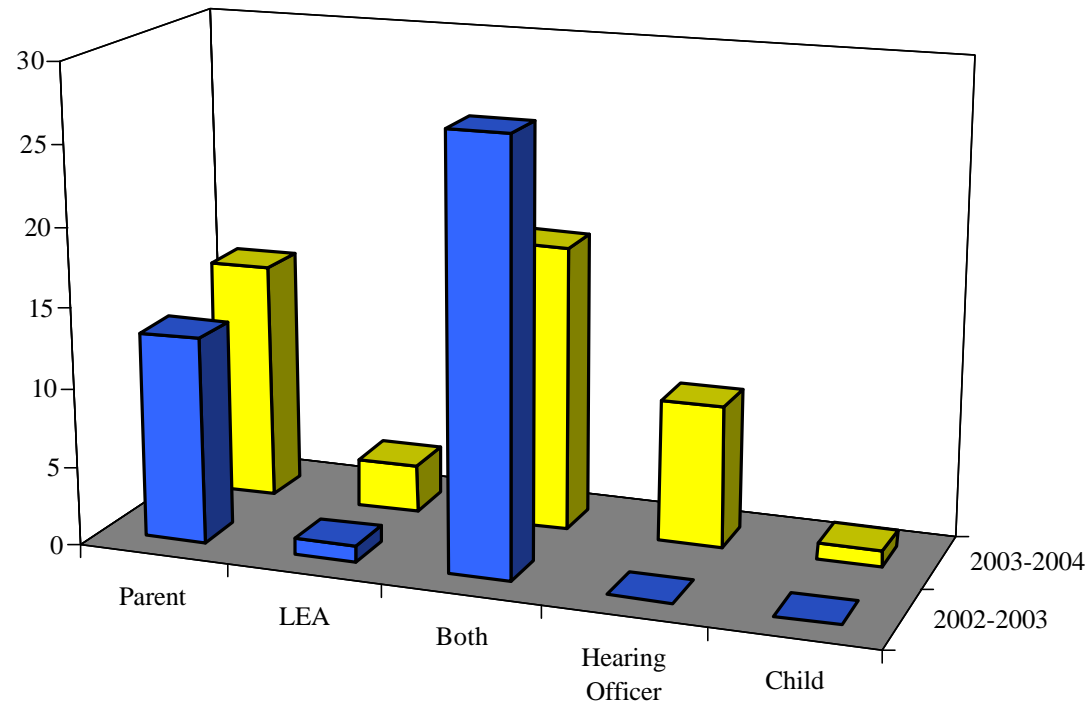
## F. IMPLEMENTATION PLANS

Following the completion of each due process hearing, whether or not it goes to full hearing or is settled or dismissed, the school division is required to file with ODR/AS an Implementation Plan that reports how the school division will implement the hearing officer's decision. The LEA has 45 calendar days to submit the implementation plan following the hearing officer's decision. The coordinator of due process services reviews and approves all implementation plans.

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<sup>9</sup> Hearing officers have been reminded that Virginia's regulations governing special education do not permit extensions to be granted to accommodate the scheduling conflicts of counsel.



**Party Requesting Extension**

	Parent	LEA	Both	Hearing Officer	Child
2002-2003	13	1	27	0	0
2003-2004	15	3	18	9	1

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
Number of plans required	127	100
Received	92	68
Approved	81	54
Pending review	11	14*
Pending obtaining/reviewing	35**	32*
Total pending closure	46	0**

\*As of 6/30/03

\*\*As of 6/30/04

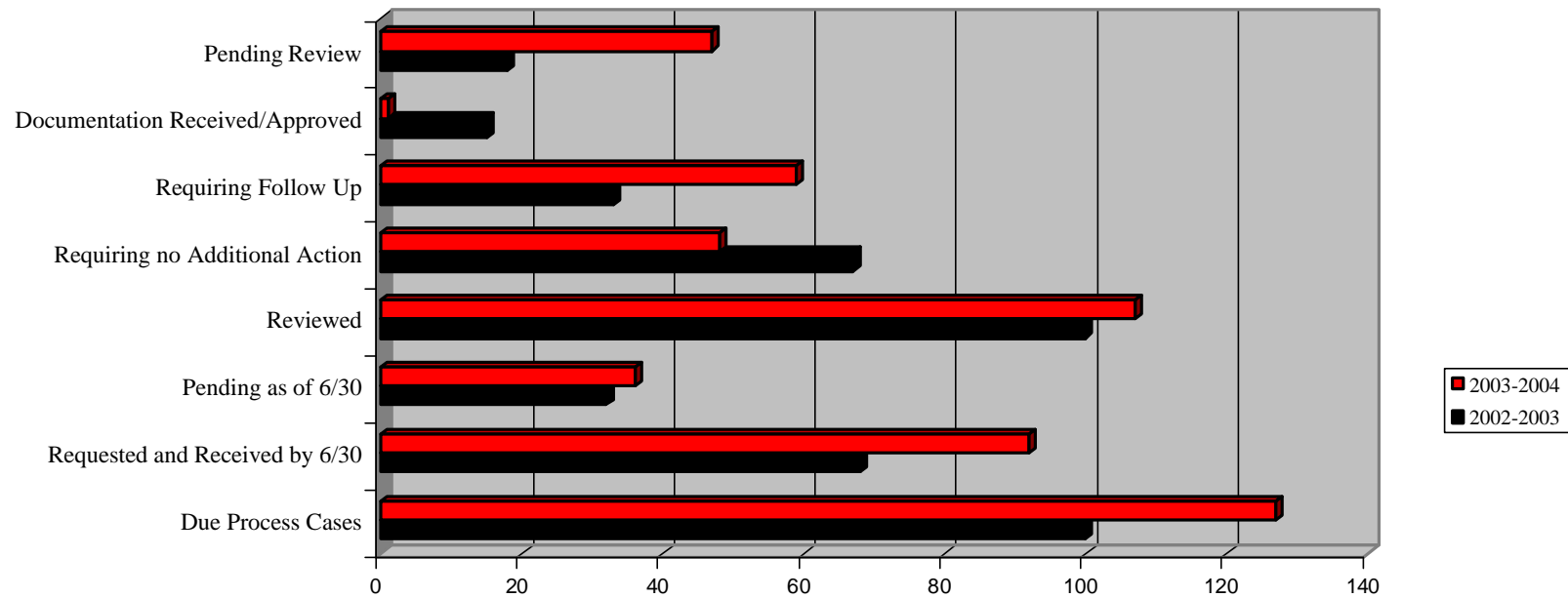
### G. FOLLOW-UP SYSTEM FOR IMPLEMENTATION PLANS

VDOE identified in its Continuous Improvement Monitoring Process as a target area to follow up with school divisions to ensure implementation of the plans that the LEAs submitted to comport with the hearing officers' decisions and which VDOE approved. This meant developing a system to review all implementation plans, require documentation and/or initiate an on-site review, to ensure completed implementation of all plans. In VDOE's CIMP reports to OSEP in June and November 2003, ODR/AS documented its system for meeting this responsibility, which was implemented on July 1, 2003. ODR/AS began with the 2002-03 Implementation Plans.

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
Number of due process cases	127	100
Number of plans requested and received by 6/30/04	92	68
Number of plans pending receipt by 6/30/04	35	32
Follow-up Implementation Plans reviewed	96	100
✓ not requiring additional action	55	67
✓ requiring follow-up activity	41	33
✓ documentation received/approved	3	33
IPs pending review	31*	0

\*Target Completion Date: June 30, 2005

### Implementation Plan Review



	Due Process Cases	Requested and Received by 6/30	Pending as of 6/30	Reviewed	Requiring no Additional Action	Requiring Follow Up	Documentation Received/Approved	Pending Review
2003-2004	127	92	36	107	48	59	1	47
2002-2003	100	68	32	100	67	33	15	18

## H. INITIATIVES

- ODR/AS is developing a guidance document for hearing officers on the subject of the 45-day timeline. This project was identified in VDOE's 2003 CIMP Report to OSEP; in VDOE's 2002 report to Virginia's Code Commission; and, in VDOE's 2004 Annual Performance Report.
  - The office's Work Plan includes the following components:
    - ✓ reviewing information from other SEAs regarding policies, procedures, and practices;<sup>10</sup>
    - ✓ reviewing three years of data to determine what patterns may exist relative to such areas as reasons for the extensions and which hearing officers are granting the extensions;
    - ✓ reviewing applicable case law on this subject; and developing the guidance document.

Anticipated completion date: June 2005

- The coordinator of due process services developed a checklist for hearing officers as a reminder of the regulatory responsibilities during the hearing process. It includes a provision on how to calculate the 45-day timeline.
- In VDOE's 2004 Annual Performance Report to OSEP, VDOE reported a project target and activity that focuses on the development of a guidance document, Alternative Dispute Resolution Guidance Document. This project was initiated during this reporting period. VDOE also developed this project in response to the concerns raised during the public hearing held by the Virginia Code Commission's Administrative Law Advisory Committee. The concerns related to the parents' need for understanding the legal intricacies of the process when representing themselves in due process hearings. Without this understanding, parents reported that they remained at a disadvantage when the school board attorney represents the LEA's interests, thus eliminating a level playing field. The document will also provide information and guidance on conflict resolution and mediation and the complaints system.

Anticipated completion date for distribution: December 2004

- In response to the above referenced public hearing, ODR/AS developed and posted on its web site, a list of legal and advocacy services for parents and students with disabilities,

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<sup>10</sup> The Mid-South Regional Resource Center was very instrumental in obtaining this information from other SEAs for VDOE.

with a brief summary description of each of the services.  
<http://www.pen.k12.va.us/VDOE/dueproc/>

## PART II      MEDIATION SERVICES

### F   Baseline Data

### F   Evaluations

- ✓ System
- ✓ Consumer
- ✓ Mediators

### F   Training

### F   ODR/AS Initiatives

Mediation offers parties involved in identifying and planning for students with special needs a confidential setting in which to explore issues, identify and examine possible outcomes and to weigh their value to the student. The outcomes are self-determined by the parties most directly involved, with assistance from the mediator. The rate at which mediations occur in agreement is between 74-78%. The figure would even rise if constituents could earlier identify the benefit of assistance in negotiations, rather than waiting for a series of TEAM meetings to stall or for a hearing to be requested. Illustrating and helping parties to grasp this possibility continues to be a priority for ODR/AS.

### A.      BASELINE DATA

VDOE's Special Education Mediation Services joined the ODR/AS staff on July 1, 2003. This unit includes: 7 mediators; ODR/AS director, coordinator of mediation services, administrative assistant; and, a contracted consultant. The current system for maintaining the baseline data was developed and implemented this reporting period. The configuration of data conforms with the Annual Performance Report's reporting requirements.

#### ☐      Disposition of Requests

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
<b>Number of requests</b>	<b>135</b>	<b>98</b>
• resolved	90	71
• partially resolved	6	0
• unresolved	25	20
• withdrawn	14	6
• pending	0	1

☐ **Requests Involving Due Process**

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
<b>Number of requests</b>	<b>135</b>	<b>98</b>
<b>Number involved in DP</b>	<b>41</b>	<b>36</b>
✓ resolved	25	25
✓ partially resolved	2	0
✓ unresolved	11	11
✓ withdrawn	3	0
✓ pending	0	0

☐ **Three-Year Review of Mediation Requests**

	2003-2004	2002-2003	2001-2002
Mediations requested	135	98	104

☐ **Issues**

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
<b>Total number of issues</b>	<b>243</b>	<b>191</b>
<b>IEP</b>	<b>163</b>	<b>110</b>
✓ sufficiency of services	66	58
✓ type of services	40	39
✓ placement	46	8
✓ goals	11	5
Staffing	24	24
Evaluation & Disability	24	21
Financial responsibility <sup>11</sup>	16	20
Discipline	11	11
Transportation	5	5

<sup>11</sup> Involves disputes over financial responsibility for costs associated with a program that the parent has selected.

☐ **Requests by Region:**

Region I:	12	Region V:	12
Region II	24	Region VI:	8
Region III:	12	Region VII:	3
Region IV:	61	Region VIII:	3

☐ **Trends**

- The number of requests for mediation represents a 38% increase over last year. This may correlate with public information and training activities by the coordinator and other members of the ODR/AS staff.
- The requests by region are consistent with prior reporting periods, with Regions II and IV, which are the largest metropolitan areas in Virginia, accounting for the most requests.
- The array of issues continues to be strongly focused on the IEP, with a marked increase (8>46) in placement and an increase in goals (5>11) as presenting issues at mediation.
- Settlement ratios are not the only indication of success of a mediation. Other benefits are that parties may better understand each other. Frequently, it is reported to us that a foundation was established which resulted in an agreement later and that subsequent negotiations were more productive. The rate at which agreements occurred among parties who actually came to the table was 74%, comparable to past years. However, when one looks at the same figure for cases in which a hearing has been requested, the number drops to 60%. A continuing problem is getting requests made for mediation before a hearing is scheduled. It is difficult to prepare oneself for collaborative negotiation and the adversarial nature of a hearing at the same time.

## **B. EVALUATIONS**

### **System Evaluation**

In July 2003, the coordinator of mediation polled special education administrators, seeking their input on the operation of the state's special education mediation services. Thirty-one responses were returned from school divisions. The coordinator seeks additional feedback



from directors at regional and statewide meetings and by telephone, as he does from parents and other constituents.

Sample comments:

*I felt listened to and fairly treated.*

*The mediator took the time to understand the issues of the division and the parent.*

*Although I haven't had experience with mediation, I do see it as a very worthwhile process to help resolve issues, which cannot be resolved by an IEP TEAM.*

*The mediator was very fair and conciliatory to both sides. There was nothing she could have done that she didn't.*

*I've used several mediators and each one was fair.*

### **Consumer Evaluation**

For the last year, evaluation forms have been provided each party at the conclusion of mediation. The coordinator of mediation reviews all the forms and follows up where indicated. Concerns raised are shared with the ODR/AS director and the individual mediator as necessary. The evaluations also provide information, which may be helpful in planning training for mediators.

The number of evaluations distributed were 245. Responses totalled 98.

Sample comments:

Parent: *Total dispute not resolved completely.*

School administrator: *The mediator was excellent! This is the second time I have worked with her and both were very positive experiences.*

Parent: *I felt the mediator did an excellent job of balancing the interests and needs of the parties. She was able to empathize while remaining impartial at the same time. I enjoyed meeting and working with her and would do so again.*

School administrator: *The mediator was very helpful. We appreciate the way he kept the proceedings civil. We believe the agreed upon proposal will yield positive results for the student.*

### **Evaluation of Mediators**

An element, which contributes to the quality of our services, is that each mediator is evaluated annually through an observation of a mediation by an ODR/AS contracted consultant. Mediators receive written and verbal feedback from the evaluator. The purpose of the evaluation is to point out areas in a mediator's professional practice where growth might occur. The coordinator and director review the evaluations and address any concerns.

### **C. TRAINING**

Two days of training were held for mediators in December 2003 and again in May 2004, reviewing regulatory requirements, aspects of assisted negotiation, mediation skills, IDEA reauthorization and 504 requirements.

The coordinator of mediation met with each region of special education administrators to review the utility of accessing the mediation process as soon as possible when difficulties in negotiations occur. He also met with new administrators, parent and school groups as a workshop leader and addressed several statewide meetings.

### **D. INITIATIVES**

- ☐ ODR/AS contributed an article, written by the coordinator of mediation, to the Spring 2004 issue of the Virginia Council of Special Education Administrators on the benefits of special education mediation and some of the considerations in preparing for it. The article was subsequently featured by the Consortium for Appropriate Dispute Resolution on their web page.
- ☐ ODR/AS is developing a guidance document on Alternative Dispute Resolution for parents and other consumers. A featured section is on conflict resolution and mediation.
- ☐ While continuing to be available to special educators' meetings, ODR/AS plans to extend our outreach to parent advisory groups and resource centers in the coming year.

## PART III COMPLAINTS SYSTEM

- Baseline Data
- Implementation System for CAPS
- ODR/AS Initiatives

### A. BASELINE DATA

#### ☐ Number of Complaints

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
<b>Number of Complaints</b>	<b>169</b>	<b>173</b>
• resolved through mediation or otherwise settlement agreement	23	30
• withdrawn	23	15
• dismissed	4	0
• findings/decisions issued	84	92
• pending as of 6/30/04	35	36*
Number exceeding the 60-day timeline without the mandated extension	1	1

\* As of 6/30/03

#### ☐ Five-Year Review of Complaints Received

Fiscal Year	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
Total Number of Complaints	164	196	193	173	169

☐ **Findings/Decisions**

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
Number of decisions issued	84	92
Number of issues	227	175
Number of issues in compliance	120	97
Number of issues in noncompliance	107	78

☐ **Decisions Appealed**

	Reporting Periods	
	July 1, 2003 – June 30, 2004	July 1, 2002 – June 30, 2003
Number of decisions issued	84	92
• <b>appealed</b>	<b>33</b>	<b>33</b>
• findings affirmed	21	25
• findings reversed	2	1
• findings remanded	1	1
• findings split	9	6
• affirmed	7	4
• reversed	4	4
• remanded	3	5
• dismissed	0	0

☐ **Issues**

	Reporting Periods					
	July 1, 2003 – June 30, 2004			July 1, 2002 – June 30, 2003		
Issues/Sub-Issues	# Issues	C*	NC*	#Issues	C*	NC*
<b>Total Case Issues</b>	<b>227</b>	<b>120</b>	<b>107</b>	<b>175</b>	<b>97</b>	<b>78</b>
<b>IEP</b>	<b>76</b>			<b>57</b>		
Implementation	53	21	32	41	18	23
Consent	4	1	3	5	4	1
content development	9	6	3	8	6	2

	Reporting Periods					
	July 1, 2003 – June 30, 2004			July 1, 2002 – June 30, 2003		
Issues/Sub-Issues	# Issues	C*	NC*	#Issues	C*	NC*
Development	10	8	2	3	2	1
<b>IEP Meetings</b>	<b>66</b>			<b>29</b>		
team composition	14	7	7	5	4	1
revisions without meeting	0	0	0	1	0	1
parental participation	11	7	4	9	7	2
review and revision	9	4	5	3	2	1
parent request for meeting denied	7	2	5	1	0	1
meeting procedures	1	0	1	3	1	2
progress reports	1	1	0	1	0	1
copy of IEP to necessary staff	4	2	2	1	0	1
Notice	16	9	7	5	1	4
Timelines	3	2	1	0	0	0
<b>FAPE</b>	<b>16</b>			<b>12</b>		
disability harassment	2	2	0	1	1	0
provision of FAPE	4	3	1	3	1	2
Loss of instruction	0	0	0	2	1	1
ESY	2	0	2	3	3	0
Transportation	5	5	0	2	2	0
Safety	3	3	0	0	0	0
Age appropriate	0	0	0	1	1	0
<b>Procedural Safeguards</b>	<b>19</b>			<b>23</b>		
IEE	2	1	1	6	5	1
informed consent	1	1	0	1	1	0
implementation of HO's order	0	0	0	2	1	1
parental participation	3	2	1			
written prior notice	13	5	8	11	5	6
Proc. Safeguards doc.	0	0	0	3	2	1
<b>LRE</b>	<b>5</b>	<b>5</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>2</b>
<b>Discipline</b>	<b>12</b>			<b>10</b>		
disciplinary procedures	8	5	3	9	6	3
MDR	4	1	3	1	0	1
<b>Eligibility/Evaluation/Reevaluation</b>	<b>17</b>			<b>20</b>		
eligibility procedures	1	1	0	7	6	1
timelines	7	4	3	6	1	5
evaluation procedures	4	2	2	6	2	4

	Reporting Periods					
	July 1, 2003 – June 30, 2004			July 1, 2002 – June 30, 2003		
Issues/Sub-Issues	# Issues	C*	NC*	#Issues	C*	NC*
Eval/reeval procedures	5	2	3	1	1	0
<b>Child Find</b>	<b>2</b>			<b>3</b>		
procedures	2	2	0	3	1	2
<b>Program Standards</b>	<b>0</b>			<b>3</b>		
qualified personnel	0	0	0	2	1	1
Staff (caseloads)	0	0	0	1	1	0
<b>Records</b>	<b>11</b>			<b>6</b>		
access	5	2	3	2	1	1
management	1	1	0	3	2	1
confidentiality	4	1	3	1	1	0
amendment	1	1	0	0	0	0
<b>Other</b>	<b>3</b>			<b>9</b>		
information provided in native language	0	0	0	1	1	0
local advisory committee composition	0	0	0	1	0	1
insurance funds	0	0	0	2	2	0
Complaint procedures	1	0	1	2	0	2
Due Process procedures	1	0	1	2	0	2
change in placement	1	1	0	1	1	0
<b>TOTALS</b>	<b>227</b>	<b>120</b>	<b>107</b>	<b>175</b>	<b>97</b>	<b>78</b>

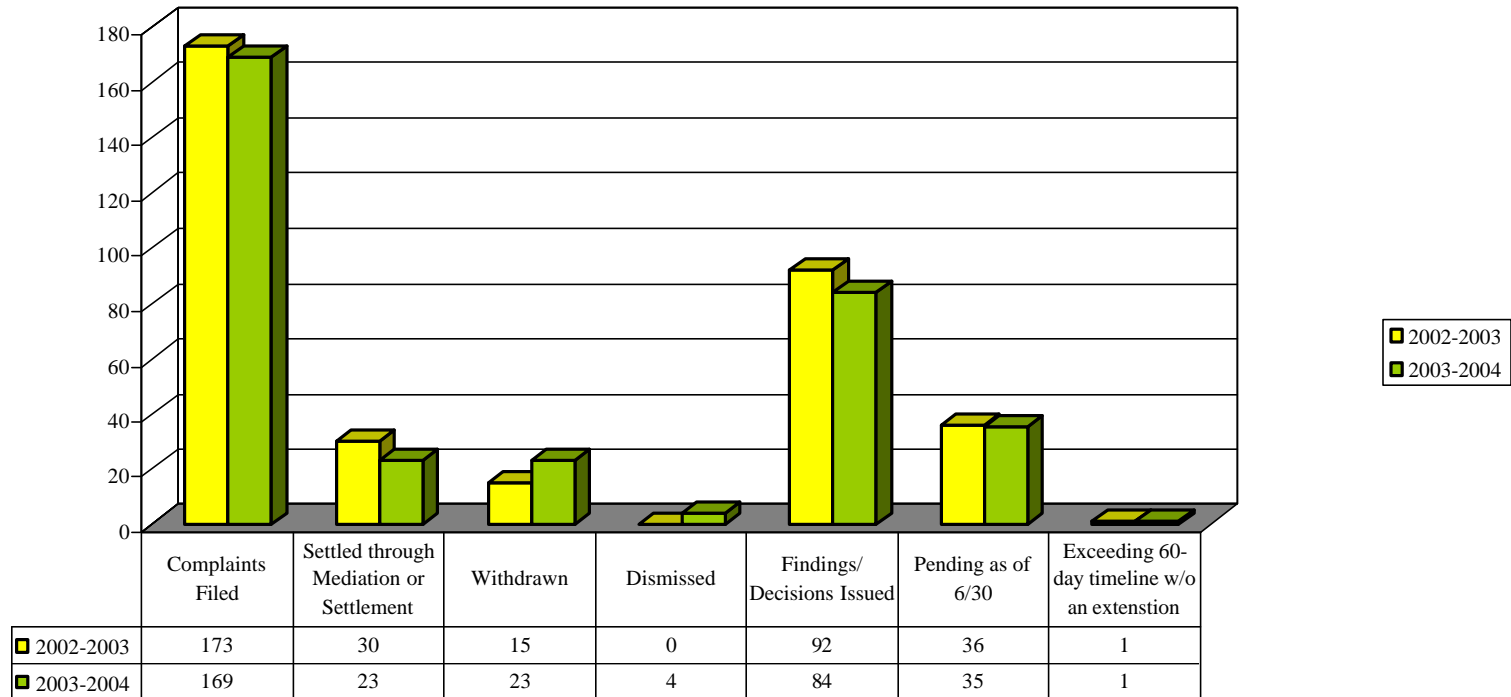
\*denotes that the LEA was found to be in compliance “C” or non-compliance “NC”.

#### ☐ Trends

- The number of complaints for this reporting period is 10 less than the average of the total number of cases over the last 5 years. The number of complaints is 24 less than last year.
- The number of complaint issues increased by 52 issues. The number of issues is significant as the regulations require the SEA to address each issue with findings.
- The number of decisions that were appealed, and the outcomes, remained consistent with the last reporting period.
- The critical areas of noncompliances:
  - ✓ IEP implementation
  - ✓ Notice and written prior notice; procedural safeguards

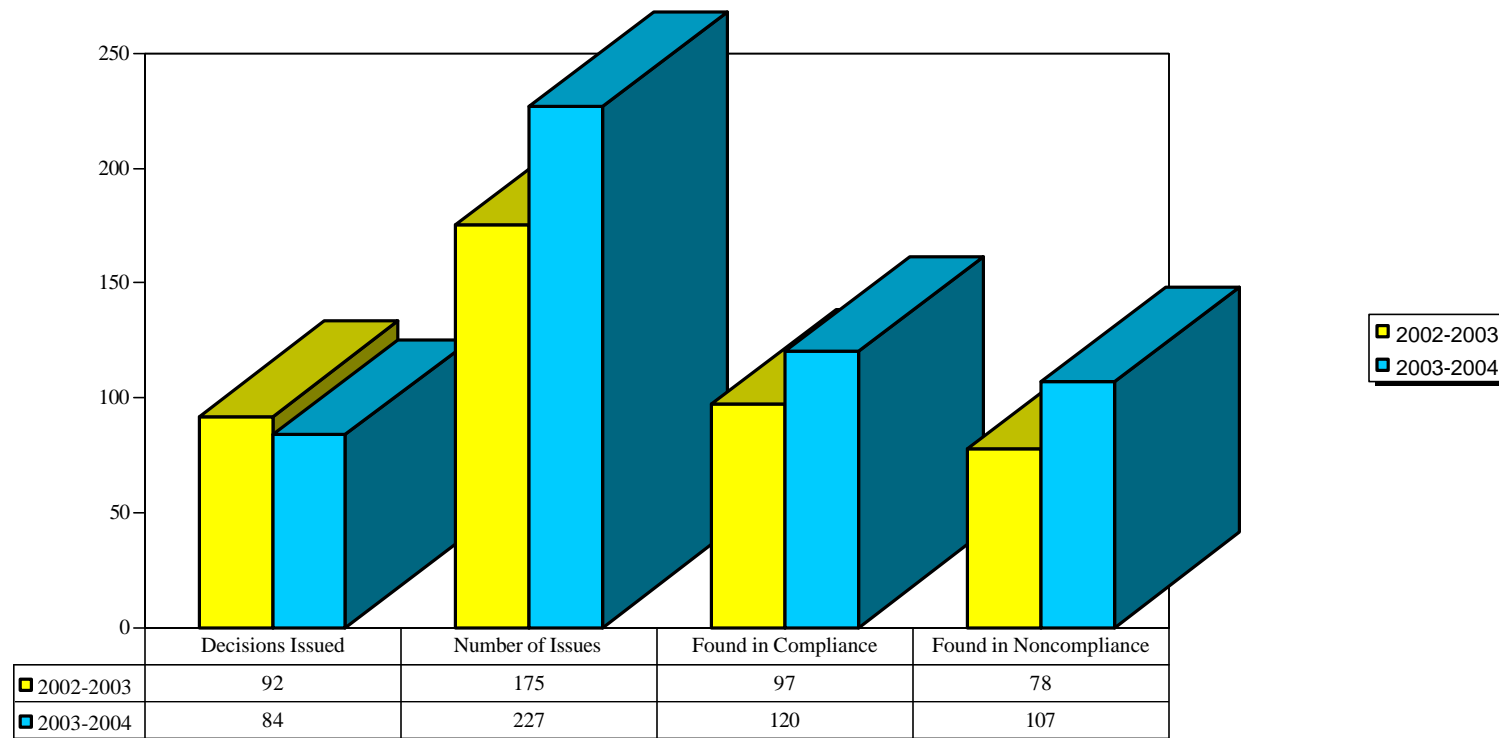
- ✓ Discipline
- Areas that showed slight improvement in compliance:
  - ✓ consent
  - ✓ IEP team composition
  - ✓ Evaluation/reevaluation procedures

## Complaint Baseline Data

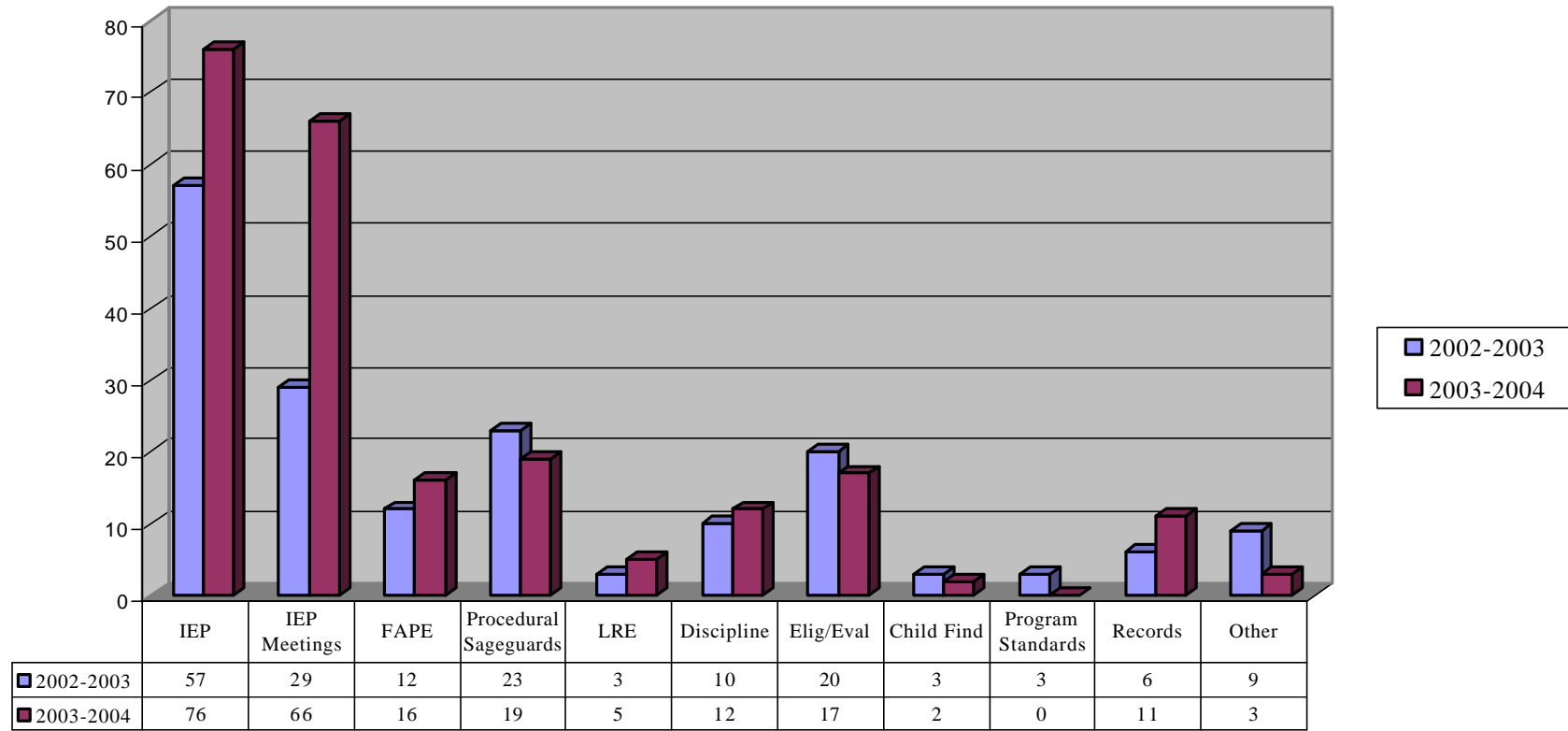




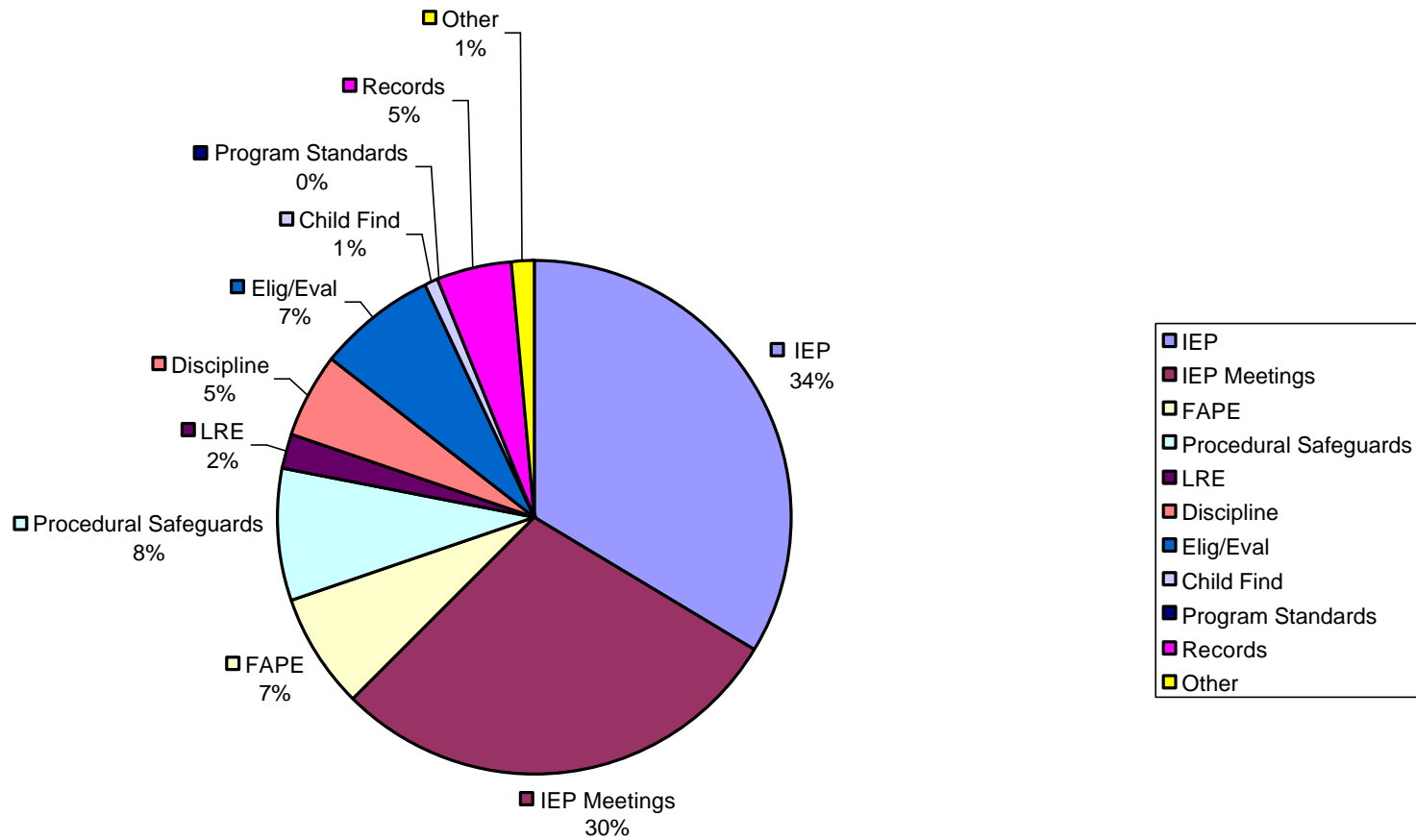
### Complaint Findings



### Complaint Issues



**Complaint Issues 2003-2004**



## B. IMPLEMENTATION SYSTEM FOR CORRECTIVE ACTION PLANS

VDOE identified as one of its target areas in its Continuous Improvement Monitoring Process to follow up with school divisions to ensure timely correction of noncompliances as required by complaint decisions. This meant developing a system to review all CAPs that had been approved by ODR/AS, and as necessary, require documentation and/or initiate an on-site review to ensure complete implementation. In VDOE's CIMP reports to OSEP in June and November 2003, ODR/AS evidenced its system for meeting this responsibility, which was developed and implemented on July 1, 2003. ODR/AS began with the 2001-02 school year CAPs.

Fiscal Year	Number of Decisions Issued	Pending Decision	CAPs Issued	Reviewed for Full Implementation and Closed	Pending Review
2001-02	108	0	98	98	0
2002-03	128	0	66	30	36*
2003-04	84	35	42	0	42**

\*anticipated completion date: 10-1-04

\*\*anticipated completion date: 7-1-05

## C. INITIATIVES

- As noted in the previous due process and mediation sections of this report, ODR/AS is developing a guidance document on Alternative Dispute Resolution for parents and other consumers. One of the document's sections focuses on the complaints system.
- Three of ODR/AS complaints specialists were newly hired in late November 2003. Their orientation included: intensive review of the office's procedures for processing complaints and inquiries; field visits to selected school divisions and State Operated Programs to observe special education programs; and on-going trainings on special education law and regulatory matters. Each specialist is assigned to two regions and serves on VDOE's technical assistance team for those particular regions. The specialist also attends regional meetings of the special education directors in the assigned region.
- ODR/AS staff, particularly the complaints staff, work closely with the VDOE parent ombudsman and parent resource specialist (both with the Office of Student Services) to provide information and guidance to the Parent Resource Centers and parents on dispute resolution matters. The ombudsman position began this fiscal year in response to the Code Commission's 2001 recommendation to VDOE to create such a position to assist parents with special education matters and understanding of dispute resolution options.

## **PART IV ADMINISTRATIVE SERVICES**

- O Annual Plans
- O Inquiries
- O Freedom of Information Act Requests
- O Initiatives

The Office of Dispute Resolution and Administrative Services is also responsible for:

- coordinating the Annual Plan process for the local school divisions and state operated programs. The coordinator of administrative services oversees the annual plan system, as well as the coordination of the FAQs and matters related to the IDEA Reauthorization. The position began in November 2003.
- coordinating the process for developing and posting responses to the Frequently Asked Questions (FAQs) reflecting questions generated by the field. The coordinator of administrative services oversees this operation.
- responding to Freedom of Information Act (FOIA) requests relative to the dispute resolution systems. The coordinator of due process services coordinates the responses to FOIA requests.
- responding to written and electronic Inquiries involving the application of federal and state regulations governing special education. The ODR/AS staff is responsible for responding to inquiries.
- tracking the IDEA Reauthorization process; coordinating VDOE's revision of the regulations governing special education and training initiatives relative to changes in the statute and regulations. The coordinator of administrative services is responsible for this function.

### ☐ **Annual Plans**

Pursuant to the *Code of Virginia*, § 22.1-215, each of the 150 Virginia school divisions and state operated programs shall submit a plan to VDOE for approval, to provide special education services to identified children with disabilities residing within its jurisdiction. This plan shall not be submitted more than annually unless changes to the plan are required by federal or state law or regulation. This plan must be received by VDOE, in substantially approvable form, no later than July 1 of each year.

For this reporting period, ODR/AS received 100% of the required plans, with a 97% approval rating. This approval rating is up from approximately 80% from this same time frame over the last two fiscal years. Currently, the coordinator of administrative services is working with the school divisions and state operated programs, that are not approved, to reconcile their plans and move them into the approval rating.

## INITIATIVES

The coordinator of administrative services is currently working to develop a coordinated process that reflects a more efficient system that will significantly impact local school divisions and state operated programs by ensuring appropriate regulatory guidance and quicker dispensing of available funds. A team of stakeholders has met and reviewed the federal and state plan requirements, with a goal of eliminating any information not required by regulation. Once completed, this team will develop an interactive Annual Plan website to increase communication and teamwork between the school divisions, state operated programs, and VDOE.

### ☐ **Frequently Asked Questions**

The revamping of the Annual Plan system resulted in a reprioritizing of this activity. ODR/AS' goal is to redesign this project to provide more timely posting of FAQs on the division's website.

### ☐ **The IDEA Reauthorization** remains pending in Congress.

### ☐ **Inquiries**

Fiscal Year	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
Number of Requests	67	136	119	158	146

Inquiries are requests for interpretation or application of regulations that are not related to a specific complaint, mediation, or due process case.

### ☐ **Freedom of Information Act Requests**

For this reporting period, there were 34 requests processed. This is a new data reporting item for ODR/AS.

APPENDIX

Dispute Resolution Activities by Local Educational Agency  
2003 - 2004

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cc: VDOE's management team responsible for the Annual Performance Report  
VDOE staff in the Division of Special Education and Student Services  
VDOE Office of Federal Program Monitoring  
VDOE hearing officers and mediators  
Virginia Supreme Court, Office of the Executive Coordinator  
State Special Education Advisory Committee  
Code Commission, ALAC  
Directors of Special Education  
Art Cernosia, Esq., consultant to VDOE's due process hearing system  
Karen Donnegan Salter, consultant to VDOE's Mediation Services

**APPENDIX A**  
**Dispute Resolution Activities by LEA**  
**2003-2004**

<b>SCHOOL DIVISION</b>	<b>SPED PUPILS AGES 0-22+</b>	<b>TOTAL PUPILS</b>	<b>Due Process Hearings Filed</b>	<b>SPED Complaints Filed</b>	<b>Mediation Cases</b>
Accomack	684	5,390	0	0	0
Albemarle	1,958	12,547	1	1	1
Alexandria City	1,998	10,902	3	1	3
Alleghany	491	2,881	0	1	1
Amelia	309	1,724	0	1	1
Amherst	579	4,542	0	0	1
Appomattox	365	2,327	1	2	1
Arlington	3,271	19,158	6	0	5
Augusta	1,614	10,714	0	0	0
Bath	120	788	0	1	0
Bedford	1,424	10,872	0	0	0
Bland	141	919	0	0	0
Botetourt	840	4,761	1	0	1
Bristol City	444	2,324	0	0	0
Brunswick	317	2,433	0	0	0
Buchanan	758	3,649	0	2	0
Buckingham	338	2,265	1	0	0
Buena Vista City	187	1,114	0	0	0
Campbell	1,062	8,815	2	5	1
Caroline	505	3,752	0	1	1
Carroll	717	4,082	1	0	0
Charles City County	158	918	0	0	1
Charlotte	322	2,287	0	0	0
Charlottesville City	799	4,422	0	0	0
Chesapeake City	7,107	39,412	1	2	3
Chesterfield	8,336	55,393	4	16	3
Clarke	216	2,071	0	0	0
Colonial Beach	81	574	0	6	0
Colonial Heights City	414	2,796	0	0	0
Covington City	208	888	0	0	0
Craig	103	713	0	0	0



<b>SCHOOL DIVISION</b>	<b>SPED PUPILS AGES 0-22+</b>	<b>TOTAL PUPILS</b>	<b>Due Process Hearings Filed</b>	<b>SPED Complaints Filed</b>	<b>Mediation Cases</b>
Culpeper	728	6,227	0	0	0
Cumberland	225	1,446	0	1	0
Danville City	953	7,384	1	1	0
Dickenson	435	2,601	0	0	0
Dinwiddie	624	4,469	1	1	1
Essex	311	1,701	0	0	0
Fairfax	23,433	164,235	32	13	18
Falls Church City	273	1,874	0	0	0
Fauquier	1,388	10,327	0	0	0
Floyd	387	2,103	0	0	0
Fluvanna	505	3,336	0	0	0
Franklin	1,379	7,270	0	1	1
Franklin City	271	1,380	0	1	0
Frederick	1,808	11,357	1	7	1
Fredericksburg City	363	2,450	0	0	0
Galax City	154	1,330	0	0	0
Giles	364	2,545	0	0	0
Gloucester	774	6,257	0	0	1
Goochland	374	2,115	0	0	0
Grayson	310	2,254	0	0	0
Greene	517	2,700	0	0	0
Greensville	426	2,634	0	1	1
Halifax	1,177	5,908	1	0	0
Hampton City	3,297	23,009	1	7	0
Hanover	2,784	18,139	6	4	0
Harrisonburg City	639	4,031	0	0	0
Henrico	6,500	45,354	11	5	6
Henry	1,568	8,180	0	0	1
Highland	58	295	0	0	0
Hopewell City	722	3,886	0	2	0
Isle of Wight	704	5,063	0	0	0
King & Queen	232	830	0	2	0
King George	457	3,203	0	1	1
King William	336	1,866	0	0	0

<b>SCHOOL DIVISION</b>	<b>SPED PUPILS AGES 0-22+</b>	<b>TOTAL PUPILS</b>	<b>Due Process Hearings Filed</b>	<b>SPED Complaints Filed</b>	<b>Mediation Cases</b>
Lancaster	171	1,447	0	0	0
Lee	792	3,732	0	1	0
Lexington City	103	472	0	0	0
Loudoun	4,429	40,750	8	9	28
Louisa	609	4,321	0	1	1
Lunenburg	320	1,710	0	0	1
Lynchburg City	1,404	8,775	1	0	1
Madison	235	1,865	0	0	0
Manassas City	782	6,803	0	0	0
Manassas Park City	282	2,288	0	0	0
Martinsville City	385	2,611	0	0	1
Mathews	233	1,298	0	0	0
Mecklenburg	823	4,785	0	2	1
Middlesex	243	1,341	0	0	0
Montgomery	1,276	9,467	0	0	1
Nelson	379	2,015	0	1	0
New Kent	493	2,546	0	0	0
Newport News City	4,322	32,893	4	4	3
Norfolk City	5,154	36,724	6	8	1
Northampton	292	2,029	1	0	0
Northumberland	211	1,488	0	0	0
Norton City	93	715	0	0	0
Nottoway	451	2,447	0	1	0
Orange	568	4,090	0	0	0
Page	414	3,584	0	1	0
Patrick	446	2,586	0	0	1
Petersburg City	756	5,363	0	1	0
Pittsylvania	1,300	9,264	0	0	0
Poquoson City	279	2,544	0	0	1
Portsmouth City	2,304	16,545	2	0	1
Powhatan	650	4,051	0	0	0
Prince Edward	564	2,852	1	0	1
Prince George	716	6,090	0	1	2
Prince William	7,540	63,404	4	3	3

<b>SCHOOL DIVISION</b>	<b>SPED PUPILS AGES 0-22+</b>	<b>TOTAL PUPILS</b>	<b>Due Process Hearings Filed</b>	<b>SPED Complaints Filed</b>	<b>Mediation Cases</b>
Pulaski	903	4,887	0	0	0
Radford City	232	1,537	0	0	0
Rappahannock	173	1,041	0	0	1
Richmond	149	1,230	0	0	0
Richmond City	4,336	25,399	2	8	0
Roanoke	2,370	14,537	0	2	0
Roanoke City	2,257	13,567	1	3	0
Rockbridge	409	2,930	0	1	0
Rockingham	1,407	11,185	1	1	6
Russell	718	4,208	1	1	0
Salem City	476	3,910	0	0	0
Scott	670	3,734	0	0	0
Shenandoah	831	5,827	0	0	0
Smyth	958	5,084	1	0	0
Southampton	515	2,853	1	0	0
Spotsylvania	3,235	22,075	0	8	3
Stafford	2,721	24,869	2	0	3
Staunton City	454	2,684	0	0	0
Suffolk City	1,503	13,273	0	2	1
Surry	191	1,142	0	0	0
Sussex	187	1,351	0	0	0
Tazewell	1,094	6,986	0	1	1
Virginia Beach City	10,765	76,304	11	13	8
Warren	765	5,076	0	2	0
Washington	1,012	7,312	0	1	0
Waynesboro City	318	3,017	2	1	2
West Point	96	775	0	0	0
Westmoreland	240	2,043	0	1	1
Williamsburg-James City	1,254	8,961	0	2	3
Winchester City	710	3,624	0	0	1
Wise	988	6,818	1	0	0
Wythe	514	4,274	0	0	0
York	1,155	12,417	1	2	3